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Nos. 80-1501 and 80-1528

IN THE

Supreme Court of the United States

OCTOBER TERM 1980

Dorothy Hope Sullivan, David Sullivan, and Warren Sullivan; Louise Crum Smith, Ralph Crum, James Crum, F. Bates Sullivan, C. H. Sullivan, Jr., Louise Sullivan Jennings, Virginia Sullivan McDaniels, Frances Rice, Through Her Co-Guardians, F. Bates Sullivan and Virginia Sullivan McDaniels, and Charlotte Gibson,

Petitioners,

Vs.

First Tennessee Bank N.A. Memphis, Executor Of Estate Of Lula S. Torian,

Respondent.

On Petitions for Writs of Certiorari to the United States Court of Appeals for the Sixth Circuit

CONSOLIDATED BRIEF OF RESPONDENT FIRST TENNESSEE BANK N.A. MEMPHIS, EXECUTOR OF THE ESTATE OF LULA S. TORIAN

Ben C. Adams
Frierson M. Graves, Jr. (OF RECORD)
John C. Speer (OF RECORD)
Stephen C. Morton
HEISKELL, DONELSON, BEARMAN, ADAMS, WILLIAMS & KIRSCH,
A Professional Corporation
2000 First Tennessee Building
Memphis, Tennessee 38103
(901) 525-8231

Counsel For Respondent

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A Professional Corporation
2000 First Tennessee Building
Memphis, Tennessee 38103
(901) 525-8231

Counsel For Respondent

QUESTION PRESENTED

Whether the Court should grant a writ of certiorari to consider whether the lower courts were correct in denying Petitioners' Motions to Dismiss Respondent's Complaint and in finding that Respondent First Tennessee Bank N.A. Memphis, executor of the estate of Lula S. Torian, had satisfied the requirements of the Federal Interpleader Act set forth in 28 U.S.C. §1335.

PARTIES TO THE PROCEEDING

In addition to the parties captioned on the cover page, the Honorable Leon Hannaford, Judge of the DeSoto County, Mississippi, Chancery Court and the Honorable Henry Wilson, Judge of the Probate Court of Crittenden County, Arkansas, are parties to the trial proceedings, but have neither appeared therein nor appealed. Robert Lamb Sullivan, whose interests are parallel to the interests of Dorothy Hope Sullivan, David Sullivan, and Warren Sullivan (petitioners in Number 80-1501), has not been served with process.

OPINIONS BELOW

The opinions of the United States District Court for the Western District of Tennessee and the United States Court of Appeals for the Sixth Circuit are unreported and begin on pages B-73 and A-1, respectively, of the Appendix to the Petition of Dorothy Hope Sullivan, *et al* (No. 80-1501).*

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* "Appendix" hereafter refers to the appendix to the Petition of Dorothy Hope Sullivan et al, which contains all documents that will be referred to in this Brief.

JURISDICTION OF THE COURT

Petitioners seek review by the Court pursuant to 28 U.S.C. §1254(1). Both petitions were filed in the Court within ninety (90) days after the entry of the latest order denying any of Pettioners' petitions for rehearing in the Court of Appeals in accordance with 28 U.S.C. §2101(c) and Supreme Court Rule 20.4.

STATEMENT OF THE CASE

Petitioners Dorothy Hope Sullivan, David Sullivan and Warren Sullivan will be herein referred to as the "Mississippi beneficiaries," not only because they reside in Mississippi, but also because they prevailed in the Mississippi courts. The remaining Petitioners prevailed in the Arkansas courts and are designated hereinafter as the "Arkansas beneficiaries;" one is a resident of DeSoto County, Mississippi and the others are residents of Tennessee. First Tennessee Bank N.A. Memphis (the "Bank") is the executor of the estate of Lula S. Torian, deceased (the "Estate") in both Mississippi and Arkansas.

At the time the Bank filed this interpleader suit there was in existence an order of the Supreme Court holding that the Bank must follow Mississippi law in paying estate taxes which required the Bank, as Executor, to pay Federal Estate Taxes from the personalty of the Torian Estate which had been devised to Louise Crum Smith, et al, the Arkansas beneficiaries. This relieved the devisees of the Mississippi real estate (Dorothy Hope Sullivan, et al, the Mississippi beneficiaries) from any obligations in connection with the Federal Estate Taxes. Also in existence was an order of the Arkansas Probate Court affirmed by the Arkansas Supreme Court which denied the Bank, as execu-

tor, full credit for payment of the Federal Estate Taxes paid pursuant to the Mississippi decree. The total credit disallowed, including interest, amounted to $256,909.36.

The Arkansas beneficiaries demanded that the Bank distribute the money which had been disallowed as credits by the Arkansas courts as part of the Federal Estate Taxes attributable to the value of the Missssippi land. The Mississippi beneficiaries relied on the orders of the Mississippi courts which relieved them of payment of *these same taxes.* Thus, the Bank, as executor, was faced with complying with two inconsistent decrees reaching opposite conclusions. It was impossible for the Bank to comply with both decrees with the assets of the estate.

Of course, at this stage, all parties except the Bank were completely satisfied. However, the District Court found that the action taken by the Probate Court in Arkansas after this suit was filed requiring the money to be paid in by the Bank under the Supersedeas Bond had no effect on the facts existing at the time the suit was filed and then held that the Complaint would be treated as one in the nature of a Bill of Interpleader. The bref of neither Petitioner calls this to the attention of this Court. Unfortunately, neither brief pays any attention to the finding of the District Court, and both briefs incorrectly assume a state of facts which came about after the suit was filed and after the money was paid by the Bank into the Arkansas Probate Court and distributed.

In addition, Petitioners also ignore the fact that this was a "Complaint in the Nature of an Interpleader" rather than a pure interpleader suit.

The Torian Estate

Mrs. Lula S. Torian died testate, residing in West Memphis, Arkansas, but owning approximately 920 acres of real property in DeSoto County, Mississippi. Appendix at B-79. Thus, it was necessary to institute probate proceedings in both Mississippi and Arkansas. Under the will of Lula S. Torian (the "Will") the land was devised to the Mississippi beneficiaries. The residuary estate and a specific bequest of stock, of a total value of $636,977.58, was bequeathed to the Arkansas beneficiaries. Appendix at B-19 and B-34. The bulk of the personal assets of the Estate were located in a lockbox at the Bank in Memphis, Tennessee. At her death, the only real property Mrs. Torian owned in Arkansas was an interest in the home in which she and Mr. Torian resided. The Torians owned the property as tenants by the entirety and it passed to Mr. Torian by operation of law. Mrs. Torian owned no personal property located in Arkansas except some personal effects and household furnishings valued at less than $3,000.00. Appendix at B-22.

Thus, it was necessary to institute probate proceedings in both Arkansas and Mississippi.

Mississippi and Arkansas Probate Proceedings

On November 3, 1972, an Order was entered upon the Bank's Petition by the Chancery Court of DeSoto County, Mississippi, admitting the Will and Codicils of Lula S. Torian to probate and appointing the Bank as executor without bond. On January 23, 1973, on the Bank's Petition, authenticated copies of the Will and Codicils thereto were admitted to probate in the Probate Court of Crittenden County, Arkansas, and the Bank was appointed Executor. Appendix at B-33.

The Mississippi Litigation

After the Bank was appointed executor in both states, the Mississippi beneficiaries sought a determination by the Mississippi court of whether Arkansas or Mississippi law would apply to allocate the death tax burden among the beneficiaries.

Mississippi law requires, absent a contrary provision in the decedent's will, that the personal estate bear the burden of taxation and that real propery shall be taxed only to the extent that the personal estate is unable to bear the tax burden. Appendix at B-27 and B-28. Arkansas law provides that such taxation shall be apportioned among all of the beneficiaries according to the value of assets received. Appendix at B-42.

After a full hearing in which the Arkansas beneficiaries fully participated, the Mississippi court held that the decedent's Will should be construed to require the payment of all estate taxes pursuant to Mississippi law. Appendix at B-16 and B-42.

The Arkansas beneficiaries appealed the decision to the Mississippi Supreme Court alleging that the lower court should have applied Arkansas law to resolve the issue of who should bear the tax burden. On November 3, 1975, the Mississippi Supreme Court affirmed the lower court's finding. As a result, the Arkansas beneficiaries at that point were required to bear the burden of all estate taxes and expenses. Appendix at B-42 and B-43.

The Bank thereafter completed payment of the federal estate tax liability. Appendix at B-37.

The Arkansas Litigation

Subsequent to the Mississippi proceedings, the Bank filed its accounting in Crittenden County, Arkansas showing that it had received personal property with a total value of $636,977.58. Credits were claimed by the Bank against these estate assets for the amounts that it had paid for federal, Mississippi and Arkansas estate and inheritance taxes following the decision of the Supreme Court of Mississippi. The Arkansas beneficiaries objected to the accounting, asserting that the residuary estate had been wrongfully charged in the sum of approximately $228,000.00 because the Executor had not apportioned the taxes pursuant to Arkansas law. Appendix at B-34 and B-43.

The Bank asserted that the decision of the Supreme Court of Mississippi, which had in personam jurisdiction of all the Arkansas beneficiaries (one of whom was a resident of DeSoto County, Mississippi), was entitled to full faith and credit, and that the question of which beneficiaries should pay the estate taxes was res judicata. The Mississippi beneficiaries in their Petition, Page vii, erroneously state that the Arkansas beneficiaries were all Tennessee residents. The Arkansas Probate Court held that the Mississippi decree was entitled to full faith and credit only insofar as it affected "Mississippi" property, which it held did not include the substantial personal property of the Estate held by the Bank in Memphis. Accordingly, the Probate Court of Crittenden County, Arkansas denied the Bank's specific credits contained in the account totaling $229,114.34. This sum represented the portion of the estate taxes which under Arkansas law would be assessed against that part of the Estate devised to the

Mississippi beneficiaries. Appendix at B-31, B-32 and B-33.

The Bank appealed from the judgment of the Probate Court of Crittenden County, Arkansas. The judgment was affirmed by the Supreme Court of Arkansas on April 24, 1978. The Supreme Court of the United States denied the Bank's Petition for Writ of Certiorari to the Supreme Court of Arkansas on October 2, 1978, Appendix at B-39 and B-52, and denied the Bank's Petition for Rehearing on November 13, 1978. Appendix at B-57 and B-58.

Proceedings Under the Federal Interpleader Act

On November 17, 1978, four days after the Supreme Court of the United States denied the Petition for Rehearing, the Bank filed this action in the Nature of Interpleader along with an Ex Parte Motion for Temporary Restraining Order in the United States District Court for the Western District of Tennessee, Western Division, requesting that all parties (including the two courts which previously had entered orders relative to the Estate) be enjoined from undertaking further state or federal court proceedings which might affect the Estate property. Appendix B-53. The District Court denied the Bank's application for the temporary restraining order on November 17, and on November 28, 1978, denied the Bank's Motion to Reconsider. Appendix at B-56 and B-59.

On November 29, 1978, the Bank appeared before the Probate Court of Crittenden County, Arkansas, upon order by that court and was required to pay the Arkansas beneficiaries $229,114.34 plus interest of $27,795.02 pursuant to order of that Court. Appendix at B-57, B-58 and B-59. Because of the failure of the District Court to grant the

temporary restraining order the Bank had to make the ordered payment. This payment was made with the Bank's *own funds* because the Estate did not have sufficient assets. Appendix at B-68 *et seq.*

The Mississippi and Arkansas beneficiaries filed Motions to Dismiss and Motions to Quash Process in the interpleader action. The District Court considered the various Motions upon oral argument of counsel on December 15, 1978. Appendix at B-73. On December 27, 1978, the District Court entered its Order Granting Preliminary Injunction and Denying Motions to Dismiss from which this appeal is taken. Appendix at B-82 *et seq.* The District Court found that both probate estates remain open and have not been finally closed. Appendix at B-81 . The trial court also found that the claims of the Arkansas and Mississippi beneficiaries were adverse because the Arkansas courts would not allow credit for the estate taxes which the Bank had charged to the various beneficiaries in accordance with the Mississippi decree. The District Court noted that the United States Supreme Court has declared that interpleader is an appropriate vehicle for protecting the plaintiff from inconsistent state court judgments and indicated that some court should be available to resolve the treat of multiple liability faced by the Bank. The District Court also held that its refusal to grant a temporary restraining order to the Bank before it was required to pay its own funds to Arkansas beneficiaries did not deprive the Court of interpleader jurisdiction. Appendix at B-73 - B-75.

On appeal to the United States Court of Appeals for the Sixth Circuit, the trial court decision was affirmed. The Court of Appeals ruled (a) that the findings of the

District Court that there is a stake and adverse claims thereto were not clearly erroneous and (b) that the District Court did not abuse its discretion in entering a preliminary injunction.

SUMMARY OF ARGUMENT

A writ of certiorari should not be granted for numerous reasons. The facts in this complex case satisfying each jurisdictional requirement of the Federal Interpleader Act have been presented to and carefully considered by the courts below. The lower courts' decisions in this case are in accord with the only other recent decision addressing whether the Federal Interpleader Act is an appropriate vehicle for resolving various states' regulation or taxation of a decedent's estate. Four Justices of this Court indicated in concurring opinions in *California v. Texas*, 437 U.S. 601 (1978), that interpleader can provide relief from various states' inconsistent claims with respect to a decedent's domicile. In *Texas v. Florida*, 306 U.S. 398 (1939) (although Justice Stewart concluded the court was in error on the jurisdictional point), a case involving this Court's original jurisdiction, the Court has suggested that an interpleader action is appropriate. To the extent that the Petitioners claim that the Respondent waited too late to file this action, this Court has sustained interpleader jurisdiction when adverse claims previously had been reduced to final state court judgments in *Treinies v. Sunshine Mining Co.*, 308 U.S. 66 (1939).

Reversal would create the incongruous result that the Respondent, executor of the Estate of Lula S. Torian, would pay approximately $256,000.00 of Federal Estate Taxes and interest from its *own* funds. Material omissions or

misstatements of facts in both petitions submitted to this Court hinder proper review.

ARGUMENT

I. THE LOWER COURTS GAVE FULL CONSIDERATION TO ALL OF PETITIONERS' ARGUMENTS, AND SUBSTANTIAL EVIDENCE SUPPORTS THEIR DECISIONS.

Both the Court of Appeals and the District Court carefully considered each of the points raised by the Petitioners concerning the jurisdictional requirements of 28 U.S.C. §1335. Substantial evidence in the record supports the findings that jurisdiction under the Federal Interpleader Act exists. To dispel the questions raised by Petitioners, a brief summary of how the jurisdictional requisites challenged in this Court were met follows.

Existence of a Stake. Petitioners urge that the Bank no longer holds a stake because the Bank was ordered by the Probate Court of Arkansas (*after* this interpleader action was filed) to pay the Arkansas beneficiaries more than $256,000.00. An executor's right of charge back under both Arkansas and Mississippi statutes was demonstrated in the Court of Appeals. Also, it was established that both the Arkansas and Mississippi estates remain open for adjustment of accounts. Petitioners argue that the decisions of the Supreme Courts of Arkansas and Mississippi render such a charge back impossible. It is because of these inconsistent judgments requiring the Executor to pay estate taxes from its funds, rather than from the estate, that the Bank seeks the protection accorded it under the Federal Interpleader Act. The decision of this Court

in *Treinies v. Sunshine Mining Co.*, 308 U.S. 66 (1939), indicates that a federal court exercising interpleader jurisdiction can issue orders in derogation of final state court judgments. Other appellate decisions cited to the Court of Appeals indicate that the Bank need not have complete custody or possession of estate assets in dispute. Aside from the conflicting judgments of the Supreme Courts of Arkansas and Mississippi entered herein, the Bank retains, under both Arkansas and Mississippi law, authority as executor to charge the accounts of all beneficiaries. Therefore, the executor still has very real control over the assets of the estate of Lula S. Torian. All Petitioners ignore the fact that the Bank has control of the Mississippi land as an asset of the Estate. Additionally, the Bank has posted a bond in the district court to abide the outcome of this action in the amount of $260,000.00.

If the Mississippi Courts were correct, the entire liability for payment of Federal Estate Taxes was an obligation of the personal estate which was left to the Arkansas beneficiaries. If the Arkansas Courts were correct, the Mississippi lands could be used for payment of the portion of the Federal Estate Tax attributed thereto and the Mississippi devisees of the land would bear the burden for payment of that portion of such taxes.

Adversity of Claims. Petitioners argue that the claims of the Arkansas and Mississippi beneficiaries are not adverse because each has no further claims against the Estate. When interpleader jurisdiction is sustained, one of the sets of beneficiaries will be charged with additional estate taxes while the other will not. Their positions clearly will be adverse as they attempt to avoid paying these taxes, which under Arkansas law are payable by the Mis-

sissippi beneficiaries and under Mississippi law are payable by the Arkansas beneficiaries.

Arguments That a Particular State Judgment Prevails.

The Arkansas beneficiaries argue that the decision of the Supreme Court of Arkansas, as the last decision in time, controls. That statement may prove true at the "second stage" of interpleader, but is irrelevant in considering whether or not the jurisdictional requirements of the Federal Interpleader Act have been satisfied by the Bank. Assertion of this position before the Court underscores the adversity of Petitioners' claims.

Federal Adjudication of Probate Matters. The Arkansas Petitioners also argue that the federal courts should not involve themselves in matters subject to Probate Court jurisdiction. The cases cited in the Arkansas beneficiaries' Brief deal only with federal diversity cases, and not interpleader cases in which the jurisdictional considerations are vastly different. No reason is given why this Court should create such an exception to the scope of interpleader relief. Four Justices of this Court in concurring opinions in *California v. Texas*, 437 U.S. 601 (1978) indicate that interpleader can in fact provide relief in probate matters regarding conflicts between states as to a decedent's domicile. In *Texas v. Florida*, 306 U.S. 398 (1939), the Court implicitly recognized the utility of interpleader in a similar situation in a case involving a controversy between states.

11. THE LOWER COURTS' DECISIONS PREVENTED THE INEQUITABLE REQUIREMENT THAT THE BANK PAY A LARGE PORTION OF THE STATE TAXES FROM THE BANK'S OWN FUNDS

Both petitions take issue with District Court Judge McRae's statement that some court has to be available to resolve the obvious dilemma in which the Bank found itself after the Supreme Court of Arkansas in effect required the Bank to pay the Arkansas beneficiaries $256,000.00 of the Bank's own funds. Appendix at B-75. The Bank has met the equitable prerequisite of interpleader — being subjected to mutually exclusive claims to a single fund, now represented by the right of charge back against real property situated in Mississippi (the Arkansas beneficiaries now hold the Bank's own funds). The equitable nature of interpleader is succinctly described in 3A *Moore's Federal Practice*, ¶22.02[1] at 3005:

> Because of its undoubted utility, interpleader provisions have been held in countless federal decisions to be remedial and thus properly to be liberally construed so as to best effectuate their purposes.

The Bank, as executor, has acted in good faith, honestly, and has but one fund that it can charge for the estate taxes. The denial of the Petitioners' Motions to Dismiss was consistent with the law applicable to Motions to Dismiss and suits of interpleader.

III. THE NATURE OF THIS CASE DOES NOT JUSTIFY SUPREME COURT REVIEW

The fact situation in this case is extremely peculiar: the executor is unable to finally charge any beneficiary with a portion of the federal Estate Taxes due to the inconsistent decrees of Arkansas and Mississippi courts concerning the allocation of the taxes between devisees of land and legatees of personalty. The issues put to the Court for review are factual in nature: whether there is a "stake" and whether the Bank waited too late to file its interpleader, thereby prejudicing the Petitioners. While the answers to these questions are of great importance to the parties, they neither raise any important legal questions nor underscore a conflict among the courts of this nation.

The central issues in this case are controlled by facts occurring since 1972, by consistent lines of decisions and by state probate statutes, as has been pointed out above. The Petitioners present no authorities on interpleader to the Court that raise any issues not already considered by the courts below. Therefore, none of the issues raised by the Petitioners merit review by this Court.

CONCLUSION

The Arkansas and Mississippi beneficiaries oppose this interpleader action because, if it is not allowed, the estate assets now held by them pending the outcome of this action may be retained by them. More than $256,000.00 (plus interest) conditionally held by the Arkansas beneficiaries, pending final settlement of the estate, is in fact money of Respondent First Tennessee Bank. The lower courts have carefully considered all the jurisdictional arguments presented by Petitioners, and there is substantial evidence

to support their decisions. This case conforms with existing decisions and does not warrant the further review by this Court. Therefore, the Bank respectfully requests that the petitions for writs of certiorari to the United States Court of Appeals for the Sixth Circuit in this matter be denied.

Respectfully submitted,
BEN C. ADAMS
FRIERSON M. GRAVES, JR.
JOHN C. SPEER
STEPHEN C. MORTON
HEISKELL, DONELSON, BEARMAN,
ADAMS, WILLIAMS & KIRSCH,
A Professional Corporation
2000 First Tennessee Building
Memphis, Tennessee 38103
(901) 525-8231
Counsel for Respondent

CERTIFICATE OF SERVICE

I, John C. Speer, certify that copies of the foregoing Brief on behalf of respondent First Tennessee Bank N.A. Memphis were mailed to Edward P. Connell and Jack F. Dunbar, P.O. Box 368, Clarksdale, Mississippi, 38614, attorneys for Petitioners Dorothy Hope Sullivan, *et al* (herein referred to as the Mississippi beneficiaries), and John S. Porter, 130 N. Court Street, Memphis, Tennessee, 38103 and Elton A. Rieves III, 200 Shoppingway, West Memphis, Arkansas, 72301, attorneys for Petitioners Louise Crum Smith, *et al* (herein referred to as the Arkansas beneficiaries) this 27th day of April, 1981.

/s/ John C. Speer